UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
PARAGON OFFSHORE PLC, *et al.*	:	**Case No. 16–10386 (CSS)**
Debtors. [1]	:	**(Jointly Administered)**
	:	**Hearing Date: Feb. 21, 2017 at 10:00 a.m. (ET)**

DEBTORS' REPLY IN SUPPORT OF THE FOURTH MOTION FOR ENTRY OF AN ORDER EXTENDING THE EXCLUSIVE PERIODS PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE

Paragon Offshore plc and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), file this reply (the "**Reply**") in support of the *Debtors' Fourth Motion for Entry of an Order Extending the Exclusive Periods Pursuant to Section 1121(d) of the Bankruptcy Code* (the "**Exclusivity Motion**")[2] [D.I. 1049] and in response to the objection (the "**Objection**") filed by the Official Committee of Unsecured Creditors (the "**Committee**") [D.I. 1097]. In support of this Reply and in further support of the Exclusivity Motion, the Debtors will submit the declaration of Ari

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Paragon Offshore plc (6017); Paragon Offshore Finance Company (6632); Paragon International Finance Company (8126); Paragon Offshore Holdings US Inc. (1960); Paragon Offshore Drilling LLC (4541); Paragon FDR Holdings Ltd. (4731); Paragon Duchess Ltd.; Paragon Offshore (Luxembourg) S.à r.l. (5897); PGN Offshore Drilling (Malaysia) Sdn. Bhd. (9238); Paragon Offshore (Labuan) Pte. Ltd. (3505); Paragon Holding SCS 2 Ltd. (4108); Paragon Asset Company Ltd. (2832); Paragon Holding SCS 1 Ltd. (4004); Paragon Offshore Leasing (Luxembourg) S.à r.l. (5936); Paragon Drilling Services 7 LLC (7882); Paragon Offshore Leasing (Switzerland) GmbH (0669); Paragon Offshore do Brasil Ltda.; Paragon Asset (ME) Ltd. (8362); Paragon Asset (UK) Ltd.; Paragon Offshore International Ltd. (6103); Paragon Offshore (North Sea) Ltd.; Paragon (Middle East) Limited (0667); Paragon Holding NCS 2 S.à r.l. (5447); Paragon Leonard Jones LLC (8826); Paragon Offshore (Nederland) B.V.; and Paragon Offshore Contracting GmbH (2832). The Debtors' mailing address is 3151 Briarpark Drive, Suite 700, Houston, Texas 77042.

[2] Terms used and not defined herein have the meanings ascribed to them in the Motion.

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Lefkovits (the "**Lefkovits Declaration**"), Managing Director in the Restructuring Group of Lazard Frères & Co. LLC ("**Lazard**"). In further support of the Reply, the Debtors respectfully represent as follows:

Preliminary Statement

1. The progress the Debtors have made in these cases negotiating a plan of reorganization that provides the framework for a global deal, but does not require the consent of all parties, demonstrates the need for the Debtors to maintain exclusivity. The Debtors have been integral to bringing the Term Lenders, Revolving Lenders and Noteholders together for negotiations, facilitating multiple sessions in person and by phone.[3] The Debtors are coordinating the plan process, continuing to provide all three parties with the diligence and information they've requested to determine the merits of each other's respective positions and settlement boundaries. Permitting the Debtors to maintain this coordination in an environment free of the distractions of a competing plan or plans will enable the Debtors to continue to work towards narrowing the divide that separates their Secured Lenders and the Noteholders in a controlled and orderly manner, an outcome no one wants more than the Debtors. Global peace translates to less time in chapter 11 and less litigation, which equals a greater chance of a successful reorganization, a result the Debtors fully support.

2. On the other hand, the Committee's dissatisfaction with the terms of the deal that the Debtors, their Term Lenders and Revolving Lenders agreed upon does not provide a basis to deny the Debtors' request for a further extension of exclusivity. In fact, the Committee's

[3] The Lefkovits Declaration, which the Debtors intend to file on Friday, February 17, 2017, will set forth in detail the meetings and calls the Debtors and their advisors facilitated with the Noteholders and their advisors and, after its formation, the Committee and its advisors.

dissatisfaction with the New Plan,[4] without more, is not even a relevant factor. There is an appropriate forum for airing the Committee's grievances regarding the New Plan, and that forum is the plan confirmation process.

3. The Committee laments that it will be prejudiced by a further extension of exclusivity but provides no evidence that this will be the case. The Debtors here do not seek to use exclusivity to delay these cases to their tactical advantage, which the Committee fully admits in its Objection when it complains that the Debtors are moving faster than the Committee would like with obtaining approval of the New Disclosure Statement[5] and New Plan. And, even then, the Committee's complaints about speed are equally unfounded. The Debtors have been in chapter 11 for *over a year*, and, since the Court's October 2016 confirmation ruling, have spent months working with their key constituents towards a new restructuring plan. In seeking approval of the New Disclosure Statement and New Plan, the Debtors have proposed a confirmation schedule that complies with all applicable Bankruptcy Code provisions, the Bankruptcy Rules, and the Local Rules and affords all parties in interest ample time to review and understand the New Plan.

4. Indeed, acquiescing to the Committee's demands would result in the litigation of two competing plans, a costly process that could further delay emergence. The Committee has not demonstrated that it is prepared to expeditiously move forward with, much less file, a viable plan of its own. Moreover, for any plan that the Committee files, to be viable,

[4] *Third Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors* (the "**New Plan**") [D.I. 1092].

[5] *Disclosure Statement for Third Joint Chapter 11 Plan of Paragon Offshore plc and its Affiliated Debtors* (the "**New Disclosure Statement**") [D.I. 1093].

it must demonstrate it can successfully cram up *two* groups of secured creditors holding over $1.4 billion of debt.[6]

5. Based on the foregoing, the Debtors' Exclusivity Motion should be granted.

Development of the New Plan

6. After the Court issued its oral ruling denying confirmation of the Modified Plan on October 28, 2016, the Debtors immediately began developing the new business plan (the "**New Business Plan**"), which envisions a smaller reorganized company, based on more conservative dayrate and utilization assumptions, much lower debt, and significant cash resources.

7. Once developed by the Debtors and reviewed by an independent third party, the Debtors presented the New Business Plan to all three creditor groups and their advisors, provided their thoughts about the current market and future prospects, and outlined potential constructs for a chapter 11 restructuring that all three creditor groups could support. The Debtors met and negotiated with all three creditor groups multiple times regarding potential proposals for a consensual plan. During these meetings, some of which were held with all creditor groups and others with specific creditor groups, a number of important, disputed legal and factual issues were identified and discussed.

8. When all parties could not reach a resolution after months of discussions, the Debtors and their advisors determined to move forward with a term sheet with the Secured Lenders, which led to the Debtors' current plan of reorganization. During negotiations regarding a revised plan, the Debtors and their advisors repeatedly conveyed to the Noteholders that their

[6] *Id.* at 18.

first priority was a resolution with all creditor groups, but that, absent reaching a global settlement within a reasonable time frame, the Debtors would move forward with only the support of the Secured Lenders.

9. Within two weeks after negotiations regarding a fully consensual restructuring stalled, the Debtors arrived at an agreement in principle with the Secured Lenders, the Term Loan Agent, and the Revolving Credit Facility Agent that reflected a comprehensive settlement of various claims and disputes among those parties. The agreement in principle was announced in Paragon Offshore plc's Form 8-K filed on January 18, 2017. On February 7, 2017, the Debtors filed the New Plan that embodies this agreement in principle.

10. The terms of the New Plan embody a comprehensive settlement of disputed issues with the Secured Lenders after extensive negotiations. The Secured Lenders have asserted an Adequate Protection Claim that exceeds $600 million. The Debtors have disagreed with the Secured Lenders' assertion. Ultimately, the Debtors and Secured Lenders agreed upon a Settled Adequate Protection Claim of not less than $352 million. In addition, the Secured Lenders have asserted that approximately $343 million of cash held by Paragon Parent, which cash is the proceeds of draws under the Revolving Credit Agreement described above, is subject to the Liens of the Secured Lenders. The Debtors have disputed such assertion. The Debtors and the Secured Lenders agreed to settle the dispute as part of the overall settlements reflected in the New Plan as well. Under the New Plan, the cash held by Paragon Parent will be distributed pursuant to the New Plan's waterfall.

11. While the New Plan does not yet embody a settlement with the Committee, it is the Debtors' desire to move forward with a fully consensual restructuring to the extent one is possible. That the Debtors have been forced by circumstances to choose a

particular path out of chapter 11 that is currently supported by only two of its three creditor groups does not in the least support the Committee's statements that the Debtors have not engaged in good faith negotiations with their unsecured creditors regarding a potential plan.

Cause Exists to Grant the Requested Extension

12. Section 1121(d) permits a court to extend a debtor's exclusivity "for cause." *See First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986) (holding that the decision to extend exclusivity is left to the sound discretion of a bankruptcy court and should be based on the totality of the circumstances in each case). As set forth in the Exclusivity Motion, courts examine a number of factors to determine whether there is "cause" for extension of exclusivity. Those factors may include, without limitation:

(i) the size and complexity of the debtor's case;

(ii) the existence of good faith progress toward reorganization;

(iii) the fact that the debtor is paying its bills as they become due;

(iv) the amount of time which has elapsed in the case; and

(v) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands.

See, e.g., In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *In re Borders Grp., Inc.*, 460 B.R. 818, 822 (Bankr. S.D.N.Y. 2011); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987).

13. For the reasons provided herein and in the Exclusivity Motion, factors (i) and (iii) indisputably favor the requested extension[7] and factors (ii) and (v) also strongly favor the requested extension.

[7] *See* Exclusivity Motion at 8, 11. Because the Committee does not appear to dispute that these factors favor the requested extension, the Debtors will not address them in this Reply.

A. The New Plan Demonstrates the Debtors' Good Faith Progress Toward a Value-Maximizing Reorganization

14. The Committee does not (and cannot) credibly argue that this factor weighs against extending the requested extension. The Debtors have filed a plan and disclosure statement supported by two of the three major creditor groups in furtherance of their emergence from chapter 11 with the best plan possible under the circumstances.

15. The New Plan is the product of an open and inclusive plan negotiation process. The Lefkovits Declaration, which the Debtors intend to file on Friday, February 17, 2017, will demonstrate that the Debtors have been in regular contact with the Noteholders or their advisors and, after its formation, the Committee members and their advisors, in connection with the development and negotiation of the New Plan and responding to diligence requests. The Lefkovits Declaration will show that Lazard Frères & Co. LLC ("**Lazard**"), financial advisors to the Debtors, and Weil, Gotshal & Manges LLP ("**Weil**"), counsel to the Debtors, participated in numerous meetings and conference calls with Ducera Partners LLC ("**Ducera**"), now the financial advisors to the Committee, and Paul, Weiss, Rifkind, Wharton & Garrison LLP ("**Paul Weiss**"), now the counsel to the Committee throughout the months of November, December, and January. The Lefkovits Declaration will further demonstrate that since a deal was reached with the Secured Lenders, the Debtors have continued to engage with the unsecured creditors. For example, on the same day the agreement in principle was announced, Lazard participated in a call with Ducera to discuss the new deal. Additionally, on February 1, 2017, Lazard held a meeting with Angelo Gordon & Co., LP, a member of the Committee, at Lazard's New York office.

16. The Noteholders, and thereafter the Committee, fully and meaningfully participated in discussions with the Debtors regarding potential restructuring alternatives. As the

record demonstrates, the Debtors have actively engaged the unsecured creditors every step of the process. Moreover, now that a Committee has been formed to represent the interests of all unsecured creditors, the Debtors will continue to engage the unsecured creditors through their discussions with the Committee.

B. The Committee's Dissatisfaction with the New Plan Does Not Support Terminating Exclusivity

17. The Committee attempts to rewrite the "good faith progress" factor by arguing that the Debtors have not made sufficient progress toward a plan that "includes an acceptable treatment for unsecured creditors."[8] The Committee's dissatisfaction with the terms of the New Plan, however, is not relevant in determining whether to grant the Debtors' requested extension.

18. The Committee's Objection is, at its core, an objection to the Secured Lenders' Adequate Protection Claim. The solution for resolving the Committee's objection to the Adequate Protection Claim should not be to terminate exclusivity and open up a costly and potentially chaotic competing plan process. There is a forum for the Committee to express its concerns with the New Plan – that forum is plan confirmation.

19. Case law is clear that stakeholder displeasure with a debtors' plan does not warrant terminating exclusivity. Although a debtor's efforts to use exclusivity to coerce creditors into accepting plan terms weighs in favor of terminating exclusivity,[9] case law instructs that "a creditor constituency's unhappiness or dissatisfaction with a debtor's proposed plan, without more, does not constitute cause to end exclusivity and undermine the debtor's chance of

[8] Objection at 10.

[9] *See In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 589 (Bankr. S.D.N.Y. 2006); *In re Texaco Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) ("An extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory." (internal citation omitted)).

obtaining confirmation of its plan during that period." *In re Spansion, Inc*., 426 B.R. 114, 140 (Bankr. D. Del. 2010) (internal citation omitted); *see also In re Premier Int'l Holdings*, No. 09-12019 (Bankr. D. Del. Dec. 7, 2009) (CSS), Hr'g Tr. p. 87 [D.I. 1291] (recognizing that while the plan in place did not provide certain noteholders with the recovery they desired, that alone is not grounds for terminating exclusivity because the debtor was not using exclusivity to "clobber them into supporting or acceding to the plan"); *accord In re Geriatrics Nursing Home*, 187 B.R. 128, 134 (D.N.J. 1995) ("[T]he Court cannot conclude . . . that the fact that one creditor constituency is not happy with the debtor's plan constitutes cause to undermine the debtor's chances of winning final confirmation of its plan during the exclusivity period."); *In re SW Boston Hotel Venture, LLC*, No. 10-14534 (JNF), 2011 WL 1675085, at *3 (Bankr. D. Mass. May 4, 2011) ("A creditor's unhappiness with a debtor's proposed plan is not a basis for terminating or denying an extension of exclusivity."); *In re Borders,* 460 B.R. at 822 ("[M]ere 'dislike' of the Debtors' proposals is, by itself, not considered a factor analyzed when considering an extension of the Debtors' Exclusive Periods.").

20. The Committee is not entitled to file a plan of its choosing simply because it disagrees with certain terms of the New Plan: "[t]he concept of an exclusivity period in favor of a debtor, a consideration at the heart of the Bankruptcy Code, on its face contradicts the notion that parties in a Chapter 11 bankruptcy case be given an equal opportunity to seek confirmation of a plan." *In re Eagle-Picher Indus., Inc.*, 176 B.R. 143, 148 (Bankr. S.D. Ohio 1994). This principle recognizes that a debtor in possession, as a fiduciary for all stakeholders, remains the party best situated to utilize the plan process to fairly maximize value for those stakeholders. *See Spansion*, 426, B.R. at 139–140 (stating that exclusivity is intended to provide "the unqualified

opportunity to negotiate a settlement and propose a plan of reorganization without interference from creditors and other interests" (internal citation omitted)).

21. Denying the Debtors' Exclusivity Motion is not the appropriate remedy for addressing the Committee's objection to the Adequate Protection Claim. Rather, the Committee's objection to the Secured Creditors' adequate protection claim should be resolved at plan confirmation. *See, e.g., In re SW Boston Hotel*, 2011 WL 1675085, at *4 (extending exclusivity noting that a creditor's "ability to seek different treatment for its claim other than that proposed by the Debtors in their Plan, is preserved by its opportunity to reject and object to the Debtors' Plan and to present evidence at a contested confirmation hearing that the Debtors' Plan does not satisfy the requirements of [the Bankruptcy Code]").

C. The Debtors Do Not Seek to Use the Requested Extension to Pressure the Unsecured Creditors

22. The Debtors do not seek to use exclusivity as a tool to pressure the Noteholders to accede to the demands of the Secured Lenders. Indeed, the Debtors do not need the Noteholders to accede to any terms of the New Plan. As discussed below, the New Plan can be confirmed over the Noteholders' objection.

23. The cases cited by the Committee involved extreme fact patterns that are easily distinguishable from this case. In *In re GMG Capital Partners III, L.P.*, the bankruptcy court terminated exclusivity where a debtor used exclusivity to create delay to allow time for its stock portfolio to appreciate in value against the primary creditor's wishes to liquidate the portfolio.[10] In *In re White Energy, Inc.*, in denying exclusivity, this Court relied, in part, on its finding that there was a "battle of attrition going on" where the only substantial offer on the table was an insider plan where (i) the insider entity had "particular control over the process, what to

[10] 503 B.R. 596, 602 (Bankr. S.D.N.Y. 2014).

accept, what not to accept, and the timing of it" and (ii) the proposed plan could not be confirmed over the secured creditors' objection.[11] Finally, in *In re Pliant Corp.*, the debtors' request to extend exclusivity was denied when the debtors' plan gave all equity to the debtors' first lien creditor group under unusual circumstances.[12] The court noted that the fact that the first lien creditor group preferred to have all of the equity rather than $89 million in cash and $236 million in secured notes gave the Court some pause because "in the marketplace, secured debt and cash is better than stock unless the value of the entity has an upside," and "if that is the case, if there is an upside there, then . . . other [c]reditor constituents have a right to test that and to see whether or not there is a plan that can give them some value without eliminating or otherwise violating the rights of the first-lien holders."[13]

24. Here, the Debtors are not seeking to maintain exclusivity as a stall tactic or as a means for unfairly capturing or assigning anticipated appreciation in the Debtors' businesses and there is no evidence to support any such assertion. Due to the absence of any evidence suggesting that the Debtors' requested extension is intended to pressure the Noteholders into acceding to the Debtors' reorganizational demands, the Debtors submit that this factor favors exclusivity.

D. <u>The Committee Has Offered No Viable Path Forward</u>

25. The Committee's primary motivation in filing its Objection is to obtain leverage in its negotiations regarding the Settled Adequate Protection Claim. In fact, in the Objection, the Committee acknowledges that "the major difference between the New Plan and a

[11] December 1, 2009 Hr'g Tr. at 56:3-58:17, D.I. 419, *In re White Energy, Inc.*, No. 09-11601 (Bankr. D. Del.) (Sontchi, J.).

[12] June 30, 2009 Hr'g Tr. at 228:13-231:4, D.I. 765, *In re Pliant Corp.*, No. 09-10443 (Bankr. D. Del.) (Walrath, J.).

[13] *Id.*

plan the Committee would file is the secured lenders' adequate protection claim."[14] With the exception of the Committee's reference to a potential plan that would not include the Secured Lenders' Adequate Protection Claim, the Committee has failed to make any proposals, much less a *viable* proposal. The absence of any alternative path going forward further supports the need for the Debtors to maintain exclusivity.

E. The New Plan Satisfies the Best Interests Test and is Therefore Confirmable

26. In the Objection, the Committee also argues that exclusivity should be terminated because the New Plan fails to satisfy the "best interests of creditors" test under § 1129(a)(7). This argument fails for a number of reasons.

27. The exclusivity factor invoked by the Committee is whether the Debtor has a *reasonable prospect* for filing a viable plan.[15] Here, the Debtors have already filed a viable plan. The Committee contends that the New Plan is not viable because it fails to satisfy the best interests test. The standard for extending exclusivity, however, does not require the Debtors to establish that the New Plan satisfies all plan confirmation requirements set forth in § 1129 of the Bankruptcy Code. Whether the New Plan satisfies section such requirements, including § 1129(a)(7), is properly decided by the Court at plan confirmation, rather than on a motion to extend exclusivity.

28. In any event, the Committee's alternative analysis of the best interests test is deeply flawed. The best interests test provides that to confirm a plan under chapter 11, every impaired creditor in a particular class must either: (1) accept the plan; or (2) receive at least as much value as the creditor would receive in a chapter 7 liquidation. 11 U.S.C. § 1129(a)(7). As

[14] Objection at 4.

[15] *See, e.g., In re Cent. Jersey Airport Servs., LLC*, 282 B.R. at 184.

set forth in liquidation analysis attached to the New Disclosure Statement, the New Plan easily satisfies the best interests test.[16]

29. In reaching its conclusion that the Noteholders would not receive at least the liquidation value of their claims under the New Plan, the Committee relies on the liquidation analysis conducted in connection with a previous plan, which was filed in April of 2016. Then, in calculating the proposed recoveries under the New Plan, the Committee only counts the cash portion of the Noteholders' recoveries, instead of the full value of their consideration, by excluding the equity interests to be distributed to the Noteholders. The Committee's flawed analysis of the best interests test should be given no weight in determining whether this factor favors the requested extension.

Conclusion

30. More than adequate cause exists for the requested extension. For the reasons provided herein and in the Exclusivity Motion, the Debtors' good faith progress toward a value-maximizing reorganization, the absence of any evidence to suggest that the Debtors seek to use exclusivity for an improper purpose, the size and complexity of the case, and the fact that the Debtors are paying their bills as they come due, all favor the requested extension.

[16] The liquidation analysis provides that, under a liquidation, the Noteholders would recover approximately 10.4% of their allowed claims, whereas, under the New Plan, the proposed recovery for Class 4 (Senior Notes Claims and Secured Lender Unsecured Claims) is estimated to be between 23% and 29%. *See* New Disclosure Statement at 11; Exhibit D of New Disclosure Statement at 3 [D.I. 1093-4].

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in the Exclusivity Motion and such other and further relief as it deems just and proper.

Dated: February 16, 2017
Wilmington, Delaware

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